



MISSOURI DEPARTMENT OF MENTAL HEALTH

KEITH SCHAFER, DEPARTMENT DIRECTOR



DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
2.210

CHAPTER Clients Rights	SUBCHAPTER Investigation Procedures	EFFECTIVE DATE 5-30-09	NUMBER OF PAGES 9	PAGE NUMBER 1 of 9
SUBJECT Abuse and Neglect Definitions and Procedures; Community Provider Facilities		AUTHORITY Sections 630.050		HISTORY SEE BELOW
PERSON RESPONSIBLE Department Deputy Director			Sunset Date 7-1-12	

Purpose: Prescribes procedures for reporting, investigating and processing reports and complaints of abuse, neglect and misuse of funds/property of Department of Mental Health (department) consumers in a residential facility, day program or specialized service that is licensed, certified or funded by the department.

Application: Applies to department employees.

(1) As used in this DOR, the following terms shall mean:

(A) "Agency," an organization that is licensed, certified, accredited, in possession of deemed status, and/or funded by the Department of Mental Health.

(B) "Complainant," any person who files a complaint.

(C) "Complaint," an allegation that neglect, misuse of funds/property, physical abuse, sexual abuse, or verbal abuse has occurred.

(D) "Consumer," an individual (client, resident, patient) receiving department-funded services directly from an agency.

(E) "Events Management and Tracking (EMT)," the automated database maintained by the department to collect and analyze data related to events that have actual or potential adverse outcomes for consumers.

(F) "Events Management and Tracking form," department approved form to collect relevant data on events that have actual or potential adverse outcomes for consumers.

(G) "Inquiry," process of gathering facts surrounding an event, complaint or upon discovery of unknown injury to determine whether the incident or event is suspect for abuse or neglect.

(H) "Misuse of funds/property," the misappropriation or conversion for any purpose of a consumer's funds or property by an employee or employees with or without the consent of the consumer or the purchase of property or services from a consumer in which the purchase price substantially varies from the market value.

(I) "Neglect," failure of an employee to provide reasonable or necessary services to maintain the physical and mental health of any consumer when that failure presents either imminent danger to the health, safety, or welfare of a consumer or a substantial probability that death or serious physical injury would result. This would include, but is not limited to, failure to provide adequate supervision during an event in which one consumer causes serious injury to another consumer.

(J) "Physical abuse,"

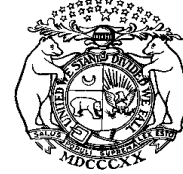
1. An employee purposefully beating, striking, wounding or injuring any consumer;

2. In any manner whatsoever, an employee mistreating or maltreating a consumer in a brutal or inhumane manner; or



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3. An employee handling a consumer with any more force than is reasonable for a consumer's proper control, treatment, or management;

(K) "Report of physical, sexual or verbal abuse, neglect or misuse of funds/property," an allegation of physical, sexual or verbal abuse, neglect or misuse of funds/property that is based upon reasonable cause to believe that the allegation has occurred.

(L) "Sexual abuse," any touching, directly or through clothing by an employee of a consumer for sexual purpose or in a sexual manner. This includes but is not limited to:

1. Kissing;
2. Touching of the genitals, buttocks or breasts;
3. Causing a consumer to touch the employee for sexual purposes;
4. Promoting or observing for sexual purpose any activity or performance involving consumers including any play, motion picture, photography, dance, or other visual or written representation;

5. Failing to intervene or not attempting to stop inappropriate sexual activity or performance between consumers; and/or

6. Encouraging inappropriate sexual activity or performance between consumers.

(M) "Verbal abuse," an employee making a threat of physical violence to a consumer, when such threats are made directly to a consumer or about a consumer in the presence of a consumer.

(2) The head of the agency shall record complaints received under 9 CSR 10-5.200 on the department EMT form. The head of the agency shall ensure that the form is completed thoroughly and accurately. All completed forms shall be immediately forwarded to the district administrator, regional center director or other department designee, who shall determine through an inquiry, if necessary, whether the complaint is based upon reasonable cause to believe that abuse or neglect has occurred.

(A) All complaints and reports of abuse and neglect shall be entered into the EMT database as inquiries by the district administrator, regional center director or other department designee within twenty-four (24) hours of the incident, or by the end of the next working day after the incident occurred, was discovered, or notification of the incident was received.

(B) The district administrator, regional center director or other department designee shall immediately refer all complaints and reports of physical, sexual or verbal abuse, neglect or misuse of funds/property to the investigations unit on the department approved form for initiating an investigation.

(3) All department employees shall immediately report any complaints they receive or make a complaint themselves if they know through direct or indirect means that abuse or neglect has occurred or suspect that such has occurred. Employees who fail to



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report complaints of known or suspected incidents of abuse or neglect or any other misconduct as defined in this regulation are subject to discipline, criminal prosecution or both.

(4) Upon receiving a complaint the district administrator's office, regional center director or other department designee shall take the following actions:

(A) Take necessary action to protect the safety or welfare of department consumers, which may include removing department consumers from the agency or placing a monitor in the agency pending the inquiry or investigation. The head of the department supervising facility shall consult with the respective division director and the Office of General Counsel prior to removal of consumers, unless such prior consultation would endanger the safety or welfare of the consumers. If prior consultation is not practicable, the respective division director and Office of General Counsel shall be informed of the removal as soon as possible.

(B) Initiate an inquiry, if necessary, to determine whether there is reasonable cause to believe that abuse or neglect has occurred. The inquiry shall be completed within a reasonable time, not to exceed ten (10) working days, unless for good cause shown additional time is needed.

(C) Within five (5) working days after receiving the complaint, notice shall be sent by regular mail to the complainant acknowledging receipt of the complaint. The notice shall specify whether an investigation or inquiry has been initiated. Copies of the complainant notification shall be provided to the assigned investigator if an investigation is initiated. Notification shall be made as follows:

1. If the complainant is a minor, the notice shall be sent to the minor's parent(s) or guardian.

2. If the complainant has been adjudged incapacitated and has a guardian appointed pursuant to Chapter 475, RSMo, the notice shall be sent to the guardian.

3. If the complainant does not have a guardian, the notice shall be sent directly to the complainant. Notification is not required to be sent to an employee of a residential facility, day program or specialized service, which is licensed, certified or funded by the department, who initiates a complaint.

(D) Initiate or ensure that a physical examination of the consumer is performed by qualified medical staff as soon as practicable in all cases involving physical abuse or neglect resulting in injury. If there is reasonable cause to believe that sexual abuse has occurred and it included penetration, a physical examination shall be conducted immediately. The physical examination shall be performed by a medical professional at the agency qualified in the "rape kit" examination. If no qualified personnel are available at the agency, then the consumer shall be transported to a medical facility where an independent medical professional qualified in the "rape kit" examination shall perform the physical examination. The examinations provided for in this section shall take place with the consent of the consumer or guardian. In those cases where medical examination or intervention is necessary due to a serious life-



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threatening injury and the consumer is unable to provide consent or the guardian is unavailable to give consent, the medical examination or intervention may be performed without consent.

(E) Immediately notify by telephone, if possible, the parents of a minor consumer or the consumer's legal guardian of the nature of the injuries and the facts and circumstances surrounding the incident as they are then known, except the names of employees and other consumers shall not be disclosed, and the actions that have been taken or that are planned regarding the care of the consumer and the inquiry or investigation into the matter.

(F) The verbal notification to the parents or guardian shall be documented, which shall include the name of the person contacted, relation to the consumer, brief description of the information communicated and received along with the time and date of the contact. If the matter is referred for investigation, this contact notification shall be provided to the investigator assigned to the investigation.

(G) As soon as practicable following the phone contact, provide written notification to the parents or legal guardian of the information provided in subsection (E) above along with the current status of the matter. If the matter is assigned for investigation, then the written notification provided for in this section shall also be provided to the assigned investigator.

(H) Direct the agency to secure any evidence involved in the incident. Any area where an incident has occurred in which it is believed potential evidence may exist shall not be disturbed, until after the review by authorized personnel such as the assigned investigator, law enforcement officials, or medical or emergency personnel, and only with the approval of the district administrator or regional center director or designee in consultation with the assigned investigator.

(I) Ensure the agency has carried out the duties to report or to provide notification as set out in 9 CSR 10-5.200 (2)(C) and 3(A) through and including 3(C).

(J) Immediately report to local law enforcement officials if there is a reasonable suspicion that any of the following abuse or neglect has occurred:

1. Sexual abuse;

2. Abuse, neglect or misuse of funds/property if the district administrator or regional director or designee has cause to believe that the acts involve criminal misconduct; or

3. Abuse and neglect that result in physical injury.

(K) Copies of all notifications required in subsection (4)(J) shall be provided to the assigned investigator if an investigation is initiated.

(5) After receiving the final investigative report, the district administrator, regional center director or other department designee shall, within twenty (20) calendar days, do one of the following actions:

(A) Request additional time to make a determination;



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(B) Request further investigation, in which case a reasonable amount of time shall be permitted to complete the additional investigation;

(C) If the report is unsubstantiated, inform the alleged perpetrator and provider by letter and enter the determination into EMT within one (1) working day of the determination and immediately submit a copy to the investigations unit; or

(D) If the report is substantiated, the determiner shall send the alleged perpetrator by regular and certified mail a letter that shall contain:

1. A summary of the conduct of the employee resulting in the determination;
2. The definition of the substantiated charges;
3. Notice that the alleged perpetrator will be disqualified from employment as set forth in section (8) of this DOR; and
4. An offer to meet with the determiner in the matter within twenty (20) calendar days from the date of the letter.

(6) If the determiner (district administrator, regional center director, or department designee) has made a preliminary finding substantiating any prohibited conduct as set forth herein, then the alleged perpetrator may request a meeting with the determiner or designee or submit written comments within twenty (20) calendar days from the date of the letter.

(A) The meeting shall be held within twenty (20) calendar days of the request for a meeting unless the parties mutually agree to an extension to a reasonable time period.

(B) Within twenty (20) calendar days of the meeting, unless additional time is needed as a result of information obtained during the meeting, or if no meeting request was received within the twenty-calendar-day period from the date of the preliminary determination letter, the determiner shall issue a final determination.

1. The alleged perpetrator shall be notified of this final determination by regular and certified mail and the provider that employed the alleged perpetrator shall be copied by regular mail.

2. The investigations unit shall be copied on all letters substantiating charges.

(C) If the report is substantiated, the determiner shall send the alleged perpetrator by regular and certified mail a letter that shall contain:

1. A summary of the conduct of the employee resulting in the determination;
2. The definition of the substantiated charges;
3. Notification of appeal rights;
4. Notice that the alleged perpetrator will be disqualified from Employment as set forth in section (8) of this DOR; and
5. Notification to the alleged perpetrator that he/she has twenty (20) calendar days from the date of the final determination letter to appeal to the department hearings administrator.



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(D) The determiner shall enter the final substantiated determination into EMT, within one (1) working day of the final determination.

1. If the report is substantiated, the final determination form shall be immediately submitted to the investigations unit, accompanied by the following documentation:

A. Copies of the preliminary determination and final determination; and

B. Written documentation of the receipt of preliminary and final determination letters. This documentation may include the signature of the employee acknowledging receipt of the letter or a document signed by department staff that the employee refused to acknowledge receipt for the letters, but was served with the letters. Service may also be shown by delivery via regular and certified mail to the alleged perpetrator at his or her last known address. The alleged perpetrator's refusal to receive the certified mail shall be deemed as proper service.

(E) If there is no appeal, the decision of the district administrator's office, regional center director's office or other department designee is final. The investigations unit shall add the perpetrator's name to the department's Disqualification Registry pursuant to section 630.170 RSMo.

(7) If the department hearings administrator or designee is contacted for an appeal, he/she shall notify the district administrator's office, regional center director's office or other department designee, and the determiner.

(A) The hearing shall be scheduled to take place within ninety (90) calendar days of the request, but may be delayed for good cause. At the hearing, the district administrator's office, regional center director's office or other department designee shall present evidence to support its substantiated charge(s). The agency and/or perpetrator may submit comments or present evidence to show why the decision of the district administrator's office, regional center director's office or other department designee should be modified or overruled.

(B) The hearings administrator or designee shall conduct hearings in accordance with the hearing procedures set forth in 9 CSR 10-5.230.

(C) The perpetrator, the determiner, the agency and the district administrator's office, regional center director's office or other department designee shall be notified in writing of the hearings administrator's or designee's decision within twenty (20) calendar days of the appeal hearing. Notice of the final decision shall be provided to the perpetrator by certified mail.

(D) If the charge is upheld by the hearings administrator's or designee's decision, the investigations unit shall place the perpetrator's name on the department's Disqualification Registry pursuant to Section 630.170 RSMo.

(8) If the department substantiates physical, sexual or verbal abuse, neglect or misuse of funds/property against the perpetrator, he/she shall not be employed by



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the department, nor be licensed, employed or provide services by contract or agreement at an agency

(9) After the investigation is completed, and after the effective date of any disciplinary action, the district administrator's office, regional center director's office or other department designee shall notify: the parent(s) of a minor consumer; a consumer's legal guardian(s); or a consumer who is their own guardian of the findings of the investigation, a summary of the facts and circumstances and actions taken, except that the names of any employees or other consumers shall not be revealed.

(10) All plans of action or correction shall be entered into EMT within ten (10) working days of the determination.

(11) All investigative materials (including final reports) shall be confidential, except as otherwise provided for in this DOR or by statute.

(A) Final investigative reports of substantiated abuse or neglect shall be released as follows:

1. The consumer who has not been adjudged incapacitated under Chapter 475, RSMo, the custodial or guardian parents or other guardian of the consumer who is the subject of such report may submit a written request to the investigations unit to obtain a copy of the investigative report. Reports released under this section shall be redacted to remove the names and other descriptive information of the complainant, witnesses, or other persons against whom findings of abuse or neglect are not made.

2. The public may submit a written request to the investigations unit to obtain a copy of the investigative report. Reports released under this section shall be redacted to remove the names and all other identifying information, including diagnosis and treatment information, about the consumer who is the subject of the report. The names and other descriptive information of the complainant, witnesses, or other persons against whom findings of abuse or neglect are not made shall also be redacted.

(B) Final investigative reports of unsubstantiated abuse or neglect shall be released as follows:

1. The consumer who has not been adjudged incapacitated under Chapter 475, RSMo, the custodial or guardian parents or other guardian of the consumer who is the subject of such report, and the agency where the consumer was receiving services at the time of unsubstantiated abuse or neglect may submit a written request to the investigations unit to obtain a copy of the investigative report. Reports released under this section shall be redacted to remove the names and other descriptive information of the complainant, witnesses, or other persons mentioned in the report.

(C) Requests for final investigative reports received from consumers who have not been adjudged incapacitated under Chapter 475, RSMo, may be denied if the director of the department or his or her designee determines that such release would



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jeopardize the consumer's therapeutic care, treatment, habilitation, rehabilitation, or the safety of others. If the request is denied, the reasons for the denial shall be submitted to the consumer in writing and documented in the consumer's chart.

(D) Requests for release of the investigative report not applicable to section (A) or (B) shall be submitted by the investigations unit to the Office of General Counsel for their review and advice.

(E) The investigative report shall be admissible in any judicial proceeding or hearing in accordance with section 36.390, RSMo, or any administrative hearing before the director of the department or director's designee.

(F) The investigative report shall not be placed in the consumer record.

(12) Department employees shall cooperate fully with law enforcement, other department employees or employees from other agencies authorized to investigate a complaint. Failure to cooperate may result in dismissal of the employee.

(13) Department employees shall forfeit their positions as set out in section 36.410 RSMo if they willfully refuse or fail to appear, or having appeared shall refuse to testify or answer questions before the investigator or the head of the facility during the investigation.

(14) No director, supervisor, or employee of an agency shall evict, harass, dismiss or retaliate against a patient, resident, consumer, or employee because he or she or any member of his or her family has made a report of any violation or suspected violation of consumer abuse or neglect. Penalties for retaliation may be imposed up to and including cancellation of agency contracts and/or placement of an individual on the DMH Employee Disqualification Registry.



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HISTORY: Original DOR effective May 1, 1983. Amendment effective May 1, 1984. Amendment effective July 1, 1996. Amendment effective July 1, 2002. Amendment effective December 30, 2003. Emergency amendment effective September 16, 2005. Amendment effective March 1, 2007. Amendment effective August 28, 2007. Amendment effective May 30, 2009.

References:

1. Sections 36.390; 630.167, 630.168, 630.170 RSMo.
2. 9 CSR 10-5.200
3. 9 CSR 10-5.230